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ABSTRACT

These guidelines explaining state pupil nondiscrimination requirements in interscholastic athletics are the result of a collaboration between the Wisconsin Department of Public Instruction and the Wisconsin Interscholastic Athletic Association (WIAA). The guide is designed to help schools fully implement Wisconsin's pupil nondiscrimination guidelines and administrative rules. The guide is organized into the following sections: overview; philosophy; Administrative Rule; meeting the goals of equity in athletics; and questions and answers. It is intended that the guidelines will help ensure the following: (1) No student's athletic participation is to be determined by any of the discriminatory factors listed in section 118.13, Wisconsin Statutes; (2) male and female athletic programs are to be provided with comparable facilities, coaching, equipment, schedules, etc.; (3) levels of competition provided are to be commensurate with student interests and abilities; (4) activities peripheral to the athletic program are to be assigned on the basis of a school plan that does not include sex as a factor; and (5) administrators, coaches, parents, and athletes must understand both the legal and philosophical implications of discrimination in athletics. Eleven appendixes include the following information or documentation: how to provide cheerleaders for both boys' and girls' sports; the school's responsibility if a complaint is filed under the Pupil Nondiscrimination Law; a sample discrimination complaint procedure; a sample discrimination complaint form; WIAA comparable sports; student interest surveys; a sample student athletic interest form; the Attorney General's opinion on logos; the State Superintendent's letter to district administrators; resources; and Section 118.13 Wisconsin Statutes. (LL)

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The Pupil Nondiscrimination Guidelines for Athletics

IMPLEMENTING SECTION 118.13 OF THE WISCONSIN STATUTES AND PI 9 OF THE WISCONSIN ADMINISTRATIVE CODE

A joint publication of
Wisconsin Department of Public Instruction / John T. Benson, State Superintendent
Wisconsin Interscholastic Athletic Association / Douglas Chickering, Executive Director

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Pupil Nondiscrimination Guidelines for Athletics

Wisconsin Department of Public Instruction
John T. Benson, State Superintendent

Wisconsin Interscholastic Athletic Association
Douglas E. Chickering, Executive Director

Implementing
Section 118.13 of the Wisconsin Statutes
and PI 9 of the Wisconsin Administrative Code

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Acknowledgments

These guidelines explaining state pupil nondiscrimination requirements in interscholastic athletics are the result of extensive collaboration between the Wisconsin Department of Public Instruction and the Wisconsin Interscholastic Athletic Association. It is the intent of both of these organizations that the guidelines help Wisconsin's public schools provide equitable and enjoyable opportunities in sports for our children.

This guide is designed to help schools fully implement Wisconsin's pupil nondiscrimination guidelines (section 118.13, Wis. Stats. and the administrative rules contained in PI 9). It is a supplement to the *Pupil Nondiscrimination Guidelines* (Bulletin No. 92377, available from the DPI's Bureau for Educational Equity Programs).

In 1990, we initiated two invitational discussions titled *Equity in Band/Cheer/Pom: Finding Solutions* in order to begin resolving the logistical difficulties of providing equitable pep band, cheerleader, and pompon support for comparable girls and boys sports. We greatly appreciate the assistance provided by representatives of the Association of Wisconsin School Administrators, Wisconsin Association of Cheer/Pompon Coaches, the Wisconsin Athletic Directors Association, and the Wisconsin School Music Association (especially the band directors). Because of the lack of guiding case law and the great difference in size of Wisconsin's schools, finding a uniform solution was impossible. We hope that the additions in subsequent editions will provide some assistance to schools still seeking solutions to this requirement.

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Overview

Discrimination in interscholastic athletics in Wisconsin has been an item of increasing concern since the 1970-71 school year, when swimming, gymnastics, and track for girls were given state tournament status by the Wisconsin Interscholastic Athletic Association (WIAA). Additional girls' sports were added to the WIAA list each year until the number totaled ten in 1982-83. As of 1993, the state interscholastic program includes ten sports for girls and 11 sports for boys.

Coincidental with the growth of girls' sports in Wisconsin was the passage of Title IX of the Education Amendments of 1972, a federal law prohibiting discrimination based on sex in educational programs receiving federal funds. Title IX gave needed impetus for the development of girls' interscholastic sports.

Although discrimination exists in many forms (based on such factors as race, creed, age, marital status, and others), most discrimination problems in interscholastic athletics have been based on sex.

In the years since 1972, nearly all Wisconsin school districts have experienced some problems in providing equity between the boys' established programs and the girls' growing programs. Problems frequently encountered included developing equitable budgets, sharing facilities, providing facilities, transporting athletes, and scheduling games. Other problems arose in providing publicity, assigning bands and cheerleaders to games, and maintaining consistent athletic codes.

Most of the problems at the school-district level have been settled by enlightened leadership and compromise, but it is not unusual for controversies to result in litigation, frequently through the federal Office for Civil Rights.

At the state level, it has been necessary for the WIAA to change some long standing rules that prohibited all competition involving boys and girls. In 1978, for example, Federal Judge Myron Gordon for the U.S. District Court–Eastern District of Wisconsin, declared that qualified girls must be allowed to participate on boys' teams if no corresponding teams for girls existed. This decision included both contact and noncontact sports and paralleled similar decisions in other parts of the country.

A number of sex-related athletic problems have yet to be resolved. Equal offerings of some WIAA sports to girls and boys during fall, winter, and spring seasons, reaching agreement at local and conference levels regarding the scheduling of activities on given days of the week, and providing equitable media coverage for boys' and girls' activities are problems that remain to be solved.

Although in 1984, the U.S. Supreme Court (in *Grove City College v. Bell*, 465 U.S. 555, 1984) cast serious doubts about the applicability of Title IX to programs such as athletics that receive no direct federal funds, the Civil Rights Restoration Act of 1988 restored and clarified the original coverage of Title IX. The U.S. Supreme Court, in a decision concerning a Title IX complaint about sexual harassment, held in February 1992 that complainants may claim monetary damages in an action brought to enforce Title IX (Franklin v. Gwinnett, 1992).

In 1985, the Wisconsin Legislature repealed and recreated section 118.13, Wis. Stats., which prohibits discrimination in public schools on the basis of sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, or physical, mental, emotional, or learning disability. Section 118.13(2), Wis. Stats., requires school boards to develop policies and procedures, including a complaint procedure, to implement the statute (see *Pupil Nondiscrimination Guidelines,* DPI Bulletin

No. 92377). Section 118.13, Wis. Stats., also requires the state superintendent to decide appeals of district decisions and promulgate rules. It authorizes the state superintendent to review school district compliance with the statute and provide school districts with technical assistance.

Since 1991 the issue of whether some mascots, logos, and nicknames currently used by school athletic teams are discriminatory and offensive has been widely debated in the press and other public forums. Some districts and the department have received complaints about discriminatory logos and mascots. In 1992, the state superintendent requested an opinion from the Attorney General on the subject of whether American Indian logos, mascots, and nicknames come within the purview of the pupil nondiscrimination statute and its rule. The opinion is straightforward and clear in stating that the use of such logos, mascots, and nicknames is clearly within the purview of the law. Further, the departmental administrative rules in PI 9, Wis. Admin. Code, which define the statutory language "discrimination," "pupil harassment," and "stereotyping" are a valid interpretation of the statute. Evaluations of whether a particular use by a school district of an American Indian logo, mascot, or nickname is discriminatory must be made on an individual, case-by-case basis. Discrimination which meets the definitions of either stereotyping or pupil harassment must be shown to be detrimental to constitute a violation of the law. Finally, it is not a necessary element of a finding of discrimination to prove that the district intended to discriminate by adopting such logos or mascots.

School districts using mascots, logos, and nicknames which have single gender or ethnic group connotations could be in violation of s. 118.13 and PI 9. In October 1992, the state superintendent urged school districts to review their logos and mascots in light of the Attorney General's opinion and to determine if a change was in order.

The Department of Public Instruction and the WIAA have prepared this publication to provide guidelines for athletic decision makers at the local and conference levels. The guidelines are based upon the spirit and regulations of Title IX, appropriate case law, WIAA rules, section 118.13, Wis. Stats., and PI 9, Wis. Admin. Code, in addition to valuable assistance from professional organizations.

Although most attention will focus on sex equity, other areas of possible discrimination that are prohibited under section 118.13, Wis. Stats., will also be discussed. It is intended that these guidelines will help ensure the following:

- No student's athletic participation is to be determined by any of the discriminatory factors listed in section 118.13, Wis. Stats.
- Since separate interscholastic athletic programs are conducted for boys and girls, both programs are to be provided with comparable facilities, equipment, coaching, game and practice schedules, training rules, awards, and publicity.
- The levels of competition provided for boys and girls are to be commensurate with student interests and abilities.
- Activities peripheral to the athletic program, such as pompon squads, cheerleaders, and pep bands, are to be assigned to specific games on the basis of a school plan that does not include sex as a factor.
- Administrators, coaches, parents, and athletes must understand both the legal and philosophical implications of discrimination in athletics.

Philosophy

The intent of most civil rights legislation is to ensure equitable treatment for minority groups and individuals who have been subject to discrimination. In Wisconsin, section 118.13, Wis. Stats., was enacted by the Legislature in an attempt to prevent discrimination in public schools on the basis of sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, or physical, mental, emotional, or learning disability.

Interscholastic athletic participation,* an important component of education for thousands of boys and girls in Wisconsin, can be significantly enhanced by this statute. However, ensuring equity in athletics, particularly sex equity, is frequently hindered by stereotypic beliefs about what constitutes safe, appropriate, and acceptable athletic participation for boys and girls. The previously held suspicion that only males should be involved in vigorous and often physical competitive sports has lessened, but not to the extent that girls' athletics have achieved a desired level of equity.

The spirit and intent of the statute, as it applies to interscholastic athletics, is to provide all boys and girls with the opportunity to participate in equitable athletic programs and activities at comparable levels of support. Nothing in section 118.13, Wis. Stats., requires identical programs for males and females in athletics.

Both DPI and the WIAA are committed to the concept of separate athletic programs for boys and girls. On the surface, this seems to contradict civil rights decisions in which courts have consistently held that "separate but equal" is in fact unequal. In athletics, however, size, strength, and weight are often the qualifying factors for successful participation, and these factors favor the average boy over the average girl. Consequently, if all sports activities were open equally to both boys and girls, the number of female athletes would be severely curtailed.

The best interests of both boys and girls in athletics seem to be served at this time by separate, comprehensive, comparable programs that are carefully organized and monitored to accommodate the interests and activities of both sexes. Comparable programs, according to DPI/WIAA philosophy, are those offering boys and girls the same or similar activities, with opportunities and resources of equal quality in the areas of coaching, provision of facilities and equipment, assignment of practice and game times, awards, publicity, and transportation. Cheerleaders, pompon squads, and pep bands have individual identities and add to the excitement and attractiveness of high school sports. Appearances at respective boys and girls contests must satisfy the same equity comparability standards as those just mentioned. The availability of concessions stands, booster activities, and so forth, cannot be ignored either.

In the matter of boys competing on girls' teams and girls competing on boys' teams, Title IX requirements and subsequent case law generally allow students to cross over only if there is no team for one sex and athletic opportunities for that sex have been limited in the past. In Wisconsin and many other states, this approach allows girls on boys' teams under certain conditions, but it does not allow boys on girls' teams. DPI/WIAA philosophy tolerates the apparent unfairness to boys in this situation only because the alternative would be more discriminatory. Both agencies monitor related state and federal case law; court findings will influence interpretations and determinations.

*As distinct from participation in physical education classes.

The philosophy of equity is most successfully reflected in athletic programs when plans and policies are developed by the people involved. Typically, this includes school administrators, athletic directors, coaches, athletes, parents, and representatives of groups that perform at athletic contests. It is especially important that adequate representation of both females and males in planning equitable athletic programs in Wisconsin be ensured.

Although most athletic equity problems should be prevented or solved at the district level, it should be emphasized that equity is guaranteed at several levels. Among the sources to be considered are the Fourteenth Amendment to the U.S. Constitution (equal protection), Title IX of the Education Amendments of 1972, the Wisconsin Constitution, section 118.13, Wis. Stats., and the bylaws and rules of eligibility of the WIAA.

DPI and the WIAA are confident in the ability of educational decision makers to guarantee equitable athletic opportunities for all boys and girls in Wisconsin. This is consistent with the tradition of educational excellence in Wisconsin that no students are denied participation in activities for discriminatory reasons. WIAA member schools have successfully identified ways to provide greater levels of gender access to interscholastic athletic programs. A positive approach, as opposed to attempts to successfully avoid compliance, must continue for Wisconsin's sports offerings to withstand the scrutiny of critical observers.

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PI 9.01 Discrimination Prohibited. This chapter establishes procedures for compliance with s. 118.13, Stats., which provides that no person may be denied admission to any public school or be denied participation in, be denied the benefits of or be discriminated against in any curricular, extracurricular, pupil services, recreational, or other program or activity because of the person's sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional, or learning disability. This chapter does not intend to prohibit the provision of special programs or services based on objective standards of individual need or performance to meet the needs of pupils, including gifted and talented, special education, school age parents, bilingual bicultural, at risk and other special programs; or programs designed to overcome the effects of past discrimination.

History: Cr. Register, October, 1986, No. 370. eff. 11-1-86.

PI 9.02 Definitions. In this chapter:

(1) "Bias" means an inclination for or against a person or group of persons based, in whole or in part, on sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, or physical, mental, emotional, or learning disability, that inhibits impartial or objective judgment affecting pupils.

(2) "Board" means the school board in charge of the public schools of a district.

(3) "Curricular program or activity" means a particular course or courses of study within the scope of the curriculum.

(4) "Department" means the Wisconsin department of public instruction.

(5) "Discrimination" means any action, policy, or practice, including bias, stereotyping, and pupil harassment, which is detrimental to a person or group of persons and differentiates or distinguishes among persons, or which limits or denies a person or group of persons opportunities, privileges, roles, or rewards based, in whole or in part, on sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional, or learning disability, or which perpetuates the effects of past discrimination.

(6) "Extracurricular program or activity" means an activity not falling within the scope of the curriculum and includes all organized pupils' activities which are approved or sponsored by the school board whether on or off school property.

(7) "National origin" includes pupils whose dominant language is other than English.

(8) "Pregnancy" includes any pregnancy-related condition.

(9) "Pupil harassment" means behavior toward pupils based, in whole or in part, on sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, or physical, mental, emotional, or learning disability which substantially interferes with a pupil's school performance or creates an intimidating, hostile, or offensive school environment

(10) "Pupil services" means a program of pupil support services and activities including counseling, health and nursing, psychological, and social work services.

(11) "Recreational program or activity" means any leisure time activity for school age children approved or sponsored by the school board and includes city recreational programs which are administered by a school board.

(12) "Sexual orientation" has the meaning defined in s. 111.32(13m), Stats.

(13) "State superintendent" means the superintendent of public instruction for the state of Wisconsin.

(14) "Stereotyping" means attributing behaviors, abilities, interests, values, and roles to a person or group of persons on the basis, in whole or in part, of their sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional, or learning disability.

History: Cr. Register, October, 1986, No. 370, eff. 11-1-86.

PI 9.03 Policies. (1) Each board shall develop policies prohibiting discrimination against pupils. The policies shall include the following areas:

(a) Admission to any school, class, program, or activity. This does not prohibit placing a pupil in a school, class, program, or activity based on objective standards of individual performance or need.

(b) Standards and rules of behavior, including pupil harassment.

(c) Disciplinary actions, including suspensions and expulsions.

(d) Acceptance and administration of gifts, bequests, scholarships and other aids, benefits, or services to pupils from private agencies, organizations, or persons.

(e) An instructional and library media materials selection policy consistent with s. 121.02(1)(h), Stats., and s. PI 8.01(2)(h).

(f) Methods, practices, and materials used for testing, evaluating, and counseling pupils. This does not prohibit the use of special testing or counseling materials or techniques to meet the individual needs of pupils.

(g) Facilities. This does not prohibit separate locker rooms, showers, and toilets for males and females, but the separate facilities must be comparable.

(h) Opportunity for participation in athletic programs or activities. This does not prohibit separate programs in interscholastic athletics for males and females, but the programs shall be comparable in type, scope, and support from the school district.

(i) School sponsored food service programs under 42 USC ss. 1751 et. seq.

(2) Existing board policies which meet the requirements of this chapter, including those adopted by the board in compliance with federal statutes such as Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973, may be incorporated into the policies required under this chapter. These policies shall be included in those presented for public hearing and commentary under sub.(3).

(3) The policies shall be adopted by the board following a public hearing or an opportunity for public commentary at a board meeting.

History: Cr. Register, October, 1986, No. 370, eff. 11-1-86.

PI 9.04 Complaint Procedure. Each board shall:

(1) Designate an employe of the school district to receive complaints regarding discrimination under s. 118.13, Stats., and this chapter.

(2) Establish a procedure for receiving and resolving complaints from residents of the school district or aggrieved persons under s. 118.13, Stats., and this chapter, including a provision for written acknowledgment within 45 days of receipt of a written complaint and a determination of the complaint within 90 days of receipt of the written complaint unless the parties agree to an extension of time; except that:

(a) Appeals under 20 USC s. 1415 and ch. 115, Stats., relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education of a child with an exceptional educational need shall be resolved through the procedures authorized by ch. 115, subch. V, Stats.

(b) Complaints under 20 USC s. 1231e-3 and 34 CFR ss. 76.780-76.782, commonly referred to as EDGAR complaints, that the state or a subgrantee is violating a federal

statute or regulation that applies to a program shall be referred directly to the state superintendent.

(3) Notify a complainant of the right to appeal a negative determination by the school board to the state superintendent and of the procedures for making the appeal.

History: Cr. Register, October, 1986, No. 370. eff. 11-1-86.

Note: Included with the department's order promulgating ch. PI 9 was the following applicability statement:

The policies required under ss. PI 9.03 and 9.04 shall be developed before August 1, 1987. Complaints of discrimination received by the board prior to August, 11987, may be handled by any existing complaint procedures provided that the time requirements of s. PI 9.04 are met. In the absence of any board complaint procedure or if the time requirements are not met, the complainant may appeal directly to the state superintendent. Negative decisions of the board may be appealed to the state superintendent under s. PI 9.08(1)(a).

PI 9.05 Public Notice. Each board shall:

(1) Annually provide public notice of board policies on pupil nondiscrimination including the name and address of the designated employe under s. PI 9.04(1) and the complaint procedure under s. PI 9.04(2). The notice shall be a class 1 legal notice under ch. 985, Stats.

(2) Include a pupil nondiscrimination statement on pupil and staff handbooks, course selection handbooks, and other published materials distributed to the public describing school activities and opportunities.

(3) Include the complaint procedure in pupil and staff handbooks.

History: Cr. Register, October, 1986, No. 370. eff. 11-1-86.

PI 9.06 Evaluation. (1) In order to provide the information necessary for the state superintendent to report on the compliance with s. 118.13, Stats., as required under s. 118.13(3)(a)3, Stats., each board shall evaluate the status of nondiscrimination and equality of educational opportunity in the school district at least once every five years on a schedule established by the state superintendent. The evaluation shall include the following:

(a) School board policies and administrative procedures.

(b) Enrollment trends in classes and programs.

(c) Methods, practices, curriculum, and materials used in instruction, counseling, and pupil assessment and testing.

(d) Trends and patterns of disciplinary actions, including suspensions, expulsions, and handling of pupil harassment.

(e) Participation trends and patterns and school district support of athletic, extracurricular, and recreational activities.

(f) Trends and patterns in awarding scholarships and other forms of recognition and achievement provided or administered by the school district.

(g) School district efforts to achieve equality of educational opportunity and nondiscrimination.

(2) The board shall provide an opportunity for participation in the evaluation by pupils, teachers, administrators, parents, and residents of the school district.

(3) The board shall prepare a written report of the evaluation which shall be available for examination by residents of the school district.

History: Cr. Register, October, 1986, No. 370. eff. 11-1-86.

PI 9.07 Reporting. Each board shall submit the following to the department:

(1) Copies of policies and procedures under s. 118.13(2)(a), Stats., and ss. PI 9.03 and 9.04, and notices under s. PI 9.05, upon request of the state superintendent.

(2) An annual compliance report, including the name of the designated employe under s. PI 9.04(1); and the number of complaints received during the year, a description of each complaint and its status.

Note: Included with the department's order promulgating ch. PI 9 was the following applicability statement: By August 1, 1987, boards shall submit the first annual report to the department as required under sub. (2) and provide public notice as required under s. PI 9.05.

(3) A copy of the written report of the evaluation conducted under s. PI 9.06.

Note: Form PI 1197, *Compliance Report—Pupil Nondiscrimination*, may be obtained from Department of Public Instruction, Division for Handicapped Children and Pupil Services, P.O. Box 7841, Madison, WI 53707.

History: Cr. Register, October, 1986, No. 370. eff. 11-1-86.

PI 9.08 State Superintendent. (1) The state superintendent shall:

(a) Decide appeals of board decisions made under s. 118.13(2)(a), Stats., and this chapter as follows:

1. The complainant may appeal a negative determination of the board to the state superintendent within 30 days of the board's decision.

2. The complainant may appeal directly to the state superintendent if the board has not complied with the provisions of s. PI 9.04(2).

3. The state superintendent shall utilize the procedures under ch. PI 1 to resolve appeals under this subsection.

4. If the state superintendent finds that the board violated s. 118.13, Stats., or this chapter, the state superintendent shall issue an order to comply which includes a requirement that the board submit a corrective action plan, including a schedule, within 30 days of the board's receipt of the order.

5. The state superintendent shall refer a complaint to the board for resolution if it has not been filed with the board or if the complaint is currently under consideration by the board under the complaint procedure required by s. PI 9.04.

(b) Include in the department's biennial report under s. 15.04(1)(d), Stats., information on the status of school district compliance with s. 118.13, Stats., and school district progress toward providing reasonable equality of educational opportunity and nondiscrimination for all pupils in Wisconsin.

(2) The state superintendent may:

(a) Provide technical assistance to school districts.

(b) Review the policies established by the board under ss. PI 9.03 and 9.04.

(c) Review school district programs, activities, and services to determine whether boards are complying with this chapter and with s. 118.13, Stats. The department may review school districts on a schedule which corresponds with the audit of compliance with school district standards under s. 121.02(2), Stats. The scheduling of reviews does not prohibit the state superintendent from conducting an inquiry into compliance with this chapter upon receipt of a complaint.

History: Cr. Register, October, 1986, No. 370. eff. 11-1-86.

Additional Definitions of Terms

Comparable Scope. Number of teams in specific sports, length of season, number of contests, number of coaches, levels of competition, and number of participants.

Comparable Support. Resources, equipment, supplies, cheerleaders, pompon squads, pep meetings, pep bands, mascots, booster clubs, uniforms and warm-ups, travel, food allowances, school-originated publicity, sport-specific clubs, scheduling of games, scheduling of practice times, medical and training facilities and services.

Comparable Type. Whether the activity is team or individually oriented, offered in the same season, and uses similar skills.

Interscholastic Athletics. Voluntary extracurricular activities which allow boys and girls to compete with individuals or teams from other schools in athletic contests.

Intramurals. Voluntary cocurricular activities which allows girls and boys to compete with individuals or teams within their own school in athletic contests.

Physical Education. A curriculum subject using physical activity as the primary means of teaching developmental skills, building physical fitness, informing students about the effects of exercise on the human body, and providing a repertoire of sports skills for lifetime use and for building desirable attitudes.

Note: The terms "cocurricular" and "extracurricular" are used interchangeably in this publication. However, when applied to pep bands, "cocurricular" may mean that playing at athletic contests is a requirement of the band elective course. "Extracurricular" may mean that playing at athletics contests is voluntary and not a requirement of the band elective course.

Meeting the Goals of Equity in Athletics

Goals	Evidence of Attainment
No student's athletic participation will be determined by any of the discriminatory factors named in section 118.13, Wis. Stats., and PI 9, Wis. Admin. Code.	• Adoption of board policy. • Announcement of athletic offerings in a season including both girls' and boys' sports.
Separate interscholastic athletic programs for boys and girls will be provided with comparable facilities, equipment, coaching, game and practice schedules, training rules, awards, and publicity.	• Written facilities policy. • Equipment inventory lists. • Coaching assignments and pay schedules. • Season game schedules. • Written practice schedules. • Athletic guidelines or codes. • District news releases. • Student newspapers. • Reports of Booster Club activities. • Coaches' job descriptions. • Interviews with athletes and coaches.
Levels of competition provided for boys and girls will be commensurate with the interests and abilities of the students.	• Results of student interest surveys taken every two to three years. • Announcements of athletic offerings in all schools. • Annually updated charts showing athletic participation by grade (for previous five years).
Activities peripheral to and supportive of the athletic program, such as pompon squads, cheerleaders, mascots, and pep bands will be assigned to specific games on the basis of a local school plan which does not include sex of the teams as a factor.	• Local school plan for assignment of pompon squads, cheerleaders, pep bands, and other support activities. • Announcements of cheerleader and pompon squad tryouts. • Schedule outlining assignments of support activities.

Goals	Evidence of Attainment
Administrators, coaches, parents, and athletes will understand both the legal and philosophical implications of discrimination in athletics.	• Written record of person responsible for athletic department compliance with equity requirements. • Announcements, agendas, evaluations of staff development sessions addressing equity in athletics for administrators and coaches (offered locally or through outside agencies such as DPI or WIAA). • Records of speaking engagements with parents and community groups addressing athletic equity. • Curriculum units used in physical education classes, social studies, or other appropriate courses addressing equity; summaries of evaluation results testing the units. • Copies of local policies on equity in athletics, as required in section 118.13, Wis. Stats., and PI 9, Wis. Admin. Code.

Questions and Answers

1. **A school is sponsoring track and field teams for boys and for girls. One girl, however, wants to compete in the pole vault which is a boys-only event. Must the school allow this?**

   Yes. However, in endorsing this provision, the WIAA Board of Control recognizes a need to establish the following contingent conditions:
   - Sixteen events are included in the respective boys' and girls' track and field programs. Any girl participating in the pole vault will be restricted to regular season meet and event maximums, as well as tournament event maximums, as are other athletes and will participate in the girls' program for all events except the pole vault.
   - Boys' and girls' meet schedules have been established allowing multiple event participation. With this mixed gender dimension there is no requirement that generally acceptable procedures be adjusted to the advantage or disadvantage of any athletes.
   - Nothing in this action permits schools to expand the girls'-team-to-boys'-team crossover privilege into other sports if dual programs are sponsored. The option is restricted to track and field because a unique event (pole vault) is not provided within the girls' program.

2. **A school sponsors both a boys' and a girls' tennis team. One very talented girl wants to compete on the boys' team instead of the girls' team. She feels the boys' team is more competitive, and she wants that experience to assist her in obtaining a major college tennis scholarship. Must the school allow this?**

   If the girls' tennis team has the identical opportunities (length of season, number of contests, scheduling similarities, tournament opportunities), she must be denied membership on the boys' team under WIAA rules.

3. **Can a female student go out for wrestling, hockey, or football and compete against other schools?**

   Case law has generally held that if a comparable activity is not sponsored for girls, an opportunity to make the boys' team cannot be denied, either in regular season or in tournament competition.

4. **Wrestling rules require a stripped shoulder-to-shoulder weigh-in. If girls participate, what provision must be made?**

   The proper procedures to use for weighing-in female wrestlers is to have a female weigh the wrestler in private. The female need not be a registered official but should be someone on the faculty of one of the participating schools. The ultimate responsibility rests with the school for which the student is wrestling. If, however, the school with the female wrestler is traveling and has assurance from the host school that a female for weighing-in will be provided, it may be handled in that

fashion. If the host school cannot or does not wish to provide someone to monitor the weigh-in, it is the responsibility of the girl's school to bring a female with them to handle this responsibility.

5. **If a girl participates in football, wrestling, or hockey, are any rules altered?**

   With the exception of the weigh-in provisions for wrestling and some handicapping conditions in certain sports, there are to be no alterations in wrestling, hockey, or football rules to accommodate any participant.

6. **What happens if an opposing school refuses to provide a wrestling opponent or if a scheduled opponent refuses to wrestle a girl?**

   If a school refuses to provide a wrestler, or if the wrestler refuses to compete against a girl, the school forfeits that match and the girl is declared the winner.

7. **A girl tries out for wrestling. The school doesn't want to have any of the boys wrestle her in practice. Is it reasonable to have our coach work out against the girl?**

   The coach must provide the same practice opportunities for the girls as for other team members. All athletes must participate in practice activities as directed.

8. **The school sponsors a boys' cross country team but has insufficient interest to provide a girls' team. But one girl has been running with the boys' team. Where will she participate in a tournament?**

   She will participate in the boys' series. Case law has generally held that if a comparable activity is not sponsored for girls, participation in the boys' activity cannot be denied, either in regular season or in tournament competition.

9. **A school does not have a tennis, golf, swimming, or soccer team for girls. Must an interested girl be permitted to participate on the boys' teams?**

   The only time participation on a boys' team can be denied to a girl is when a comparable girls' team is sponsored. *Participation includes trying-out and competing.*

10. **Does a girl have any additional physical examination requirements or parental waiver requirements if she desires to participate in wrestling, hockey, or football?**

    The requirements for participation are the same for all eligible students. An additional medical documentation form or parental waiver cannot be required for a girl prior to her participation.

11. **Why are softball and baseball no longer considered comparable sports for girls and boys, respectively?**

    The Supreme Court of Appeals of West Virginia recently ruled in the plaintiff's favor on this issue. The court noted from the record in this case that the "games of

baseball and softball are not substantially equivalent" and distinguished the "superficial similarity" between the games by citing differences, including equipment, skill levels, and dimensions of the playing surface. The court concluded with the assertion that it was dealing with the case in which an opportunity is given to try out for the team.

12. Can a pregnant girl be denied participation in athletics?

State statutes prohibit discrimination based on pregnancy. However, an athletic code may include pregnancy among other health-related factors that might affect eligibility for both boys and girls.

The same criteria should be used to determine whether a pregnant girl should compete as are used to determine whether a student with appendicitis should compete. A girl should be treated the same as a student who has an injury or other physical condition that might affect eligibility to participate. If no policy exists for boys' participation, then no policy should exist for girls.

13. Boys are not afforded the opportunity to play interscholastic volleyball or to participate in gymnastics within the sanctioned sports programs of the WIAA. Must a boy be allowed to participate on a girls' team?

The courts have generally held that because of past inequities in girls' sports programs it would jeopardize participation opportunities for girls to permit boys to compete on girls' teams.

14. A school sponsors a varsity, junior varsity, and freshman team in boys' basketball but only a varsity and junior varsity program in girls' basketball. Is this acceptable?

The criteria for offering interscholastic competition within a sport must be the same for boys and girls. It should be locally developed and include, among other factors, interest, abilities, and available competition.

15. A girls' program in a given sport has to be offered if there is already sufficient interest, and there is already a boys' team in that sport. What constitutes sufficient interest?

The criteria used to establish boys' programs should also be used to determine whether or not there is sufficient interest to initiate a girls' program.

16. If five programs are offered for boys and five for girls, are equity standards met?

Not necessarily. According to the rule implementing section 118.13, Wis. Stats., programs shall be comparable in type, scope, and support from the school district. If a comparable activity is not sponsored for girls, the chance to participate in the boys' activity cannot be denied. If there is interest in establishing a girls' team in a sport offered only to boys, the criteria used to initiate the boys' team should be applied to determine whether that expressed interest is sufficient for a separate girls' team.

17. Are *equal* expenditures required for boys' and girls' programs offered in the same season, such as football and volleyball?

Title IX of the Federal Education Amendments of 1972 does not require equal expenditures for girls' and boys' sports in the same season or even if the sports are comparable, such as girls' basketball and boys' basketball. However, the expenditures must meet the needs of the respective programs. In the case of comparable sports, the expenditures must be *equitable* rather than *equal*.

18. A school is planning to offer golf as a sport next year. A sign-up sheet has been posted on the athletic bulletin board, and boys' and girls' names are being accepted. Is the school proceeding in a manner acceptable to the WIAA?

Article VI, Section G, of the WIAA Constitution reads as follows:

> "The Board of Control shall prohibit all types of interscholastic activity involving boys and girls competing with or against each other except (a) as prescribed by state and federal law and (b) as determined by Board of Control interpretations of such law."

If there is enough interest to sponsor only a boys' team, girls may not be denied the opportunity to try out for the boys' team. If girls make the team, they must play under the boys' rules, including playing from the boys' tees, and they will also be entered in the boys' tournament series. If enough students sign up to sponsor a girls' team but not a boys' team, a girls' team may be established. However, boys will not have the opportunity of participating on the girls' team.

19. Is cheerleading considered a sport?

Cheerleading is not recognized by the WIAA as an interscholastic sport. It cannot be used as a factor in determining equal opportunities for athletic participation. The provision of cheerleaders at games, however, must be equitable for teams of both sexes (*see Appendix A*).

20. We are attempting to meet equity requirements by providing cheerleaders support at both girls' and boys' athletic contests, however, girls' coaches and/or players do not want cheerleaders at their games. What can we do?

Positive communication and gradual implementation helps all parties involved to accept this as law. Concentrate on the positive aspects of 118.13 that boys have traditionally experienced. Some schools have constituted a committee with coaches, players, and cheerleaders involved in planning implementation.

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21. Presently we have cheerleaders for boys' soccer in the fall. In order to comply with 118.13, Wis. Stats., we need cheerleaders for girls' soccer in the spring. This additional squad extends the season to the whole school year. What can be done?

In order to be equitable for the cheerleaders, schools must recognize that lengthening the season involves additional budget, coaching staff, and uniforms.

If budgetary constraints prohibit hiring additional cheerleading coaches or lack of student interest makes provision of cheerleaders in the spring impossible, the elimination of soccer cheerleaders would be the best alternative.

22. Our principal is interpreting "comparable sports" to mean that because we are cheering for boys' football in the fall, we now are being asked to cheer for girls' volleyball during the same season. Is his interpretation correct?

The definition of "comparable" in this document refers to sports using "similar skills." Using this definition, girls' volleyball is not comparable to football and should not require cheerleaders. In addition, volleyball does not lend itself to having cheerleaders present on the sidelines and has not historically used cheerleaders.

23. I want to provide equal opportunities for all races in our school to participate in the cheer/pompon programs. However, only Caucasian students have expressed interest in trying out. What are my responsibilities at this point?

Active recruiting with the help of students, teachers, and even community members may increase the interest level of these students. They need to know, as do all students, that they are welcome and will be treated fairly.

24. Active recruiting has sparked an interest in my cheer/pompon program by all races, however, only Caucasian students have met the skill and/or academic requirements for placement on the squad. Have I met my obligations even though no minority students were selected?

You may want to examine the possibility of pre-try out clinics that include students of color or a special effort to recruit. In addition, you may want to assure yourself that there are no unconscious cultural barriers in the criteria used in the tryout.

25. Our school has only one varsity basketball cheerleading/pompon squad with one coach. How can we schedule to cover all boys' and girls' games?

Section 118.13, Wis. Stats., requires "equitable" support for comparable sports. This does not necessarily mean "total" support from cheerleaders/pompons. If your schedule traditionally had 20 games, keep the 20-game limit but split equally the coverage at girls' and boys' games. Coordination with other conference schools would be helpful to ensure consistency.

Careful consideration of any solution should take into account that cheerleaders, pompon squads, and their coaches should have a reasonable game schedule comparable to other athletes.

26. What are the requirements for school bands playing at equal numbers of boys' and girls' athletic contests?

There is no requirement under s. 118.13 that a pep band play at athletic contests. However, once a school decides that it wants pep bands to play at contests, the school must ensure that music support is equitable at comparable girls' and boys' games. This does not mean that the band is required to play at all boys' and all girls' basketball games, for example, In fact, this is likely to be too many nights per week for a limited number of band members to perform. The school should adopt a plan at the beginning of the school year that establishes the number of contests per season for boys' and girls' sports. Please note that the school need not provide bands for those sports that do not lend themselves to pep band performance, such as gymnastics, even if that means an imbalance of performances in that season. Support can be provided other ways for those types of sports.

27. The girls' swimming and diving team competing in the fall has only two coaches, but the boys' swimming and diving team competing in the winter has three coaches. Is this acceptable?

The criteria for assigning coaches to a sport should be the same for both girls and boys. It should be locally developed and include, among other factors, interest, abilities, *number of participants*, and available competition.

28. The boys' baseball team is provided school-issued practice uniforms. The newly organized girls' softball team must provide all of their own practice attire. Is this acceptable?

If the boys' baseball team is provided school-issued practice uniforms, the same should be provided for the girls' softball team.

29. When a school has limited facilities for winter sports programs, is it reasonable to have the girls practice in the morning before school?

If facilities are limited and necessitate varied practice times, girls' and boys' teams should alternate practice schedules so both have equal access to the more convenient times. Schools are advised to develop schedules on a seasonal basis.

30. Is there an accepted standard to determine the time of year when a program should be sponsored?

It is difficult to respond to this question. When the WIAA assumed responsibility for the governance of girls' athletics, a number of programs had been established and were continued in their existing calendar slot. The U.S. District Court in Montana addressed this issue in 1986 and stated that a change in seasonal placement will not facilitate the goal of maximizing participation in athletics. Because

five of the ten sports sponsored for girls are offered in the fall, seasonal placement is an acknowledged concern of the WIAA and DPI and continues under study.

31. Our school officially wants unilaterally to enact a specific measure to achieve a greater degree of equity. The schools in the conference to which we belong wouldn't adopt a majority position enabling us to implement our desired objective. What can we do?

One option is to petition each member school's board of education for relief using the complaint procedure outlined in Appendix C. However, before doing so ask that the item be placed on a conference meeting agenda and address the issue in the presence of Department of Public Instruction and/or WIAA representatives.

32. Must games be scheduled so that the more favorable nights of the week are equally available to girls as they are to the boys?

Schools and conferences should take the initiative in establishing contest schedules so that girls' and boys' teams have an equal opportunity to play on nonschool nights and so that one program does not always have its games scheduled on nights followed by school days.

33. Must locker rooms, practice facilities, competition facilities, and medical and training facilities and services be comparable for both boys and girls?

Programs offered for boys and girls should provide facilities, supplies, and equipment that are comparable in quality and availability.

34. What impact can booster clubs and related fund raising have on athletic programs?

Section 118.13 Wis. Stats., states that programs should be of the same type, scope, and support from the school district. Booster club financial contributions can affect program opportunities. School districts should have a policy on receiving gifts that assures school control of program support and encourages comparable support.

35. Is it appropriate to use an American Indian or other ethnic mascot, logo, or nickname?

In 1992, the Attorney General stated in an opinion requested by the state superintendent that "the use of American Indian mascots, logos, and nicknames *could* cause an American Indian harm by reinforcing a stereotype and/or creating an intimidating or offensive environment, thus perpetuating past discrimination" (*see Appendix H*).

Therefore, the language of the statute and the rule is comprehensive enough that an American Indian logo, nickname, or mascot could be a violation of this statute. However, each case should be examined individually to determine whether the logo, nickname, or mascot in question is offensive or negative, since not all images are intrinsically negative or offensive.

School districts using mascots, logos, and nicknames which have single gender or ethnic group connotations could be in violation of s. 118.13 and PI 9. In October 1992, the state superintendent urged school districts to review their logos and mascots in light of the Attorney General's opinion and to determine if a change was in order.

(Fore more information, request the forthcoming DPI packet "Mascots, Logos, and Nicknames" by contacting the American Indian Studies Program at 608/267-9155.)

36. What are the state superintendent's responsibilities regarding s. 118.13, Wis. Stats.?

The state superintendent decides appeals of school board discrimination decisions. The state superintendent is required under PI 9.08(1) to submit information on the status of school district compliance with this statute to the legislature in the department's biennial report. Technical assistance must also be provided to assist in complying with this statute, as a district requests.

37. What are the DPI's reporting responsibilities to the legislature concerning the status of school district compliance with s. 118.13, Wis. Stats., and school district progress toward providing reasonable equality of educational opportunity and nondiscrimination for pupils in Wisconsin?

In its biennial report to the Legislature, the DPI must include information on the status of school district compliance with the statute and district progress toward providing equal educational opportunity.

38. Can complainants appeal to the state superintendent when they feel the school board has not complied with the provisions of PI 9 and s. 118.13, Stats.?

Complainants may appeal directly to the state superintendent if the board has not complied with the provisions of PI 9.04(2) by not having a complaint procedure available or by not reaching a determination in 90 days of receipt of a written complaint.

39. What procedure does the state superintendent utilize to resolve complaints under PI 9.08(1)(a) 1 and 2? Can the state superintendent's decision be appealed?

The state superintendent is required to use the procedures under PI 1 to resolve complaints. The procedures available under PI 1 include: providing technical assistance and trying to resolve the matter informally; conducting an investigation; conducting a hearing; issuing a decision based on the record of a hearing before the local school district; issuing a protective order; arranging for mediation; directing the complainant to exhaust administrative remedies available before the school district; or determining that the state superintendent does not have jurisdiction.

If an investigation is conducted, the state superintendent will determine after the investigation is completed, whether reasonable grounds exist for believing that the matter asserted by the complainant is probably true. If the state superintendent concludes that the school district has violated s. 118.13, he will direct the board to comply with the law, and will give the board 30 days to submit a plan to correct the situation.

The state superintendent's final decision concerning a complaint is subject to judicial review under the provisions of ch. 227, Wis. Stats.

40. What procedure does the state superintendent follow if he/she receives a complaint that has not been filed with the school board or if the complaint is currently under consideration by the school board?

The state superintendent shall refer a complaint back to the school board for resolution if it has not been filed with the school board or if the complaint is currently under consideration by the board. See PI 9.08(1)(a)(5), Wis. Admin. Code.

41. What services may the state superintendent provide to school districts to assist them in achieving equity goals?

The state superintendent may provide technical assistance to school districts. This includes assistance in policy development, staff inservice, review of district procedures, and other consulting services requested by the school district. See Appendix N for DPI resource personnel.

Appendixes

A. Providing Cheerleaders for Both Boys' and Girls' Sports

B. School Responsibility if a Complaint is Filed Under the Pupil Nondiscrimination Law

C. Sample Discrimination Complaint Procedure

D. Sample Discrimination Complaint Form

E. WIAA Comparable Sports

F. Student Interest Surveys

G. Sample Student Athletic Interest Form

H. Attorney General's Opinion on Logos

I. State Superintendent's Letter to District Administrators

J. Resources

K. Section 118.13, Wis. Stats.

Providing Cheerleaders for Both Boys' and Girls' Sports

One of the most frequently asked questions by a school district implementing equitable support for girls and boys athletic programs is "How can we provide cheerleaders for boys' and girls' basketball teams?"

This section provides possible answers to difficult organizational questions as schools implement federal and state laws that require the following:

- Cheerleading opportunities that encourage both girls and boys to try out for squads.
- Comparable support activities for comparable sports, including equipment, supplies, cheerleaders, pep band appearances, school-generated publicity, pompon squads, pep meetings, mascots, booster clubs, uniforms and warm-ups, travel, food allowances, sport-specific support clubs, scheduling of games, scheduling of practice times, medical and training facilities and services

Concern	Possible Solutions
Very few people attend the girls' basketball games. How can we justify a separate squad for the girl's teams?	• Examine the reason for providing cheerleaders. If the primary reason is to encourage the players, cheerleaders are as helpful for girls as for boys. • Note that girls' and boys' basketball are often compared; since inequities in the programs are noticeable to players, coaches, and community members, the school will want to make it apparent that it values the programs equally by providing cheerleaders for both.
We have decided to provide cheerleaders for comparable boys' and girls' teams. How can we do that without creating the impression that one squad is more prestigious than another?	• Several options are suggested: increase the total number of cheerleaders, then rotate them at each contest so all squad members cheerleadingwith both teams. Have the squad cheerleadingonly at home games. Have two full squads and rotate them between girls' and boys' contests. A separate squad for girls' teams and boys' teams does not satisfy equity standards and is not permissible.

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Concern	Possible Solutions
We want cheerleaders at both contests but our cheerleaders refuse to cheer for the girls. What can we do?	• This may be happening because all the cheerleaders are girls. Change the squads so that they are 50 percent male and 50 percent female. Point out that the school values the contributions of its female athletes as much as its male athletes.• Inform the cheerleaders that the school intends to be in compliance with the law and that cheering for both teams will be a part of their responsibilities if they accept a position as cheerleader. • Eliminate cheerleaders for all sports in which the problem occurs.
We want boys as well as girls to try out for cheerleading, but boys refuse to do it. How can we encourage them?	• Make sure that announcements for tryouts include the statement that boys and girls are invited. • Ensure that cheerleader tryouts and performances include a variety of skills: strength, agility, grace, and so forth. • Note that colleges and universities have both male and female cheerleaders.

Making the Transition Easier

In order for a smooth transition when implementing equitable support, we suggest that open communications occur among all parties involved. Change always stimulates some resistance but a "no surprises" philosophy can go a long way toward easing resistance. The plan should not be considered as final. Frequent re-evaluation and modification will make for a better, more satisfying plan for all involved.

Considerations for addressing change include the following:

• A year before implementing changes in cheer, pompon, and band programs to comply with federal and state statutes, meetings could occur among the athletic director; band director; and cheerleading, pompon, and athletic coaches. Needs and concerns for each group would be discussed. A plan for compliance might then be formulated over time.

• Coaches and band directors may want to get input from their groups to address their needs.

• Some schools have involved parents in informational meetings after a plan has been formulated.

• Once a plan has been decided on, it may be taken to the school's principal for approval or revisions and to the school board when finalized.

• It is very important during cheerleading and pompon tryouts that the new plan is explained to the tryout participants so that they know what will be expected of them should they become members of the respective squads.

• Finally, the band director and cheerleading and pompon coaches should sit down with the athletic director and choose the contests for which they will perform keeping all their needs in mind when scheduling.

• Cheerleading coaches may want to follow the above steps on a conference level to ensure that games attended will have cheerleaders from both schools represented. A good time for this would be at conference athletic meetings.

School Responsibility if a Complaint is Filed Under the Pupil Nondiscrimination Law

Step 1 Attempt informal resolution.

Step 2 Provide copy of local complaint procedure to complainant.

Step 3 Provide written acknowledgement of a written complaint within 45 days.

Step 4

- Provide school's written determination of the complaint within 90 days of acceptance of the written complaint, unless both parties agree to an extension of time.
- Inform complainant of right to appeal a negative determination to state superintendent and of the procedures for making the appeal.

Step 5 Make changes as agreed. or Await state superintendent's determination of appeal if complainant chooses this route.

Step 6 Make changes as required. or Appeal dismissed; no change required.

Sample Discrimination Complaint Procedure

Example

Gibbsville School District
S. 118.13, Wis. Stats.
Public Discrimination Complaint Procedure

If any person believes that Gibbsville School District or any part of the school organization has failed to follow the law and rules of s. 118.13, Wis. Stats., or in some way discriminates against pupils on the basis of sex, race, religion, color, national origin, ancestry, creed, pregnancy, martial or parental status, sexual orientation, or physical, mental, emotional, or learning disability, he/she may bring or send a complaint to the Administration Office at the following address: 1763 Huron Drive, Gibbsville, Wisconsin 53700.

Step 1 A written statement of the complaint shall be prepared by the complainant and signed. This complaint shall be presented to the district employee designated to receive complaints. That employee shall send written acknowledgment of receipt of the complaint within 45 days.

Step 2 A written determination resolving the complaint shall be made by the board within 90 days of receipt of the complaint unless the parties agree to an extension of time; appeals under 20 USC s. 1415 and ch. 115, Wis. Stats., relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education of a child with an exceptional educational need shall be resolved through the procedures authorized by ch. 115, subch. V, Wis. Stats.

Step 3 If a complainant wishes to appeal a negative determination by the board, he/she has the right to appeal the decision to the state superintendent within 30 days of the board's decision. In addition, the complainant may appeal directly to the state superintendent if the board has not provided written acknowledgment within 45 days of receipt of the complaint or made a determination within 90 days of receipt of the written complaint. Appeals should be addressed to: State Superintendent, Wisconsin Department of Public Instruction, 125 South Webster Street, P. O. Box 7841, Madison, Wisconsin 53707.

Step 4 Discrimination complaints on some of the above bases may also be filed with the federal government at the U.S. Department of Education, Office for Civil Rights—Region V, 401 South State Street, 7th Floor, Chicago, Illinois 60605-1202. These include complaints of sex discrimination under Title IX of the Federal Education Amendment of 1972 and complaints of discrimination on the basis of race, color, creed, or language as prohibited by Title VI of the Federal Civil Rights Act of 1964.

Note: The 118.13 complaint procedure does not apply to district employees or job applicants. Also, it does not replace the federal regulations that require a school district to have Title IX and Section 504 complaint procedures.

Sample Discrimination Complaint Form

Sample
Discrimination Complaint Form
(For Local Use)

Name		Date	
Address	City	State	Zip
Telephone *Home*	Telephone *School or Work*		

Status of person filing compliant ❑ Student ❑ Employee ❑ Parent ❑ Other _____

Filing complaint alleging discrimination on the basis of

Statement of complaint (include type of discrimination charged and the specific incidents(s) in which it occurred)

Signature of complainant	Date complaint filed
Signature of person receiving complaint	Date received

Submit all copies to (employee designated to receive complaints), or the immediate supervisor, or their respective secretaries. The person receiving the complaint will sign and date the complaint. Once copy will be returned to the complainant, one copy will be sent to the school or department affected by the complaint, and one copy will be sent to the complaint investigation officer.

Distribution: 1st copy—Complaint investigation officer
2nd copy—School/department
3rd copy—Complainant

Appendix E

WIAA Comparable Sports

For the purpose of making equity decisions, comparable sports are those that give boys and girls meaningful opportunities to participate in interscholastic athletics. Comparable sports provide both boys and girls with similar sponsored programs, season lengths, contest maximums, coach/participant ratios, support activities, practice and contest schedules, available transportation, supplies and equipment budget, and contest officials. Whether identical sports are offered to both boys and girls is a matter to be determined by the interests and abilities of participants.

I. Girls	Boys
Basketball	Basketball
Cross Country	Cross Country
Golf	Golf
Soccer	Soccer
Swimming	Swimming
Tennis	Tennis
Track & Field	Track & Field

II. Girls Only: Although gymnastics, softball, and volleyball are now recognized as sports for girls only, they may be recognized for boys if sufficient interest develops.

III. Other: There are no girls' sports at this time comparable to football, hockey, baseball, and wrestling. Since only a few girls, statewide, have shown interest in participating in these sports, no teams for girls have been organized. However, individual girls have occasionally participated on boys' teams.

Student Interest Surveys

One of the basic implications of the Title IX regulation and Wisconsin statutes is that sports and athletic programs must effectively accommodate the interests and abilities of all students. This standard necessitates the development and application of data collection procedures. One of the primary methods for determining the interests of students is to conduct a survey of student interests at regular intervals.

Please take a minute to think about how a student interest survey should be designed and answer the following questions:

1. What types of information should be included in a student survey?

2. What do you believe would be the outcome of a student survey conducted in your schools?

3. What procedures should be used for its distribution?

4. How frequently should student interest surveys be conducted?

Physical activity personnel need to consider what should be included in a student survey, the procedures to be used for its distribution, the frequency of student interest surveys, and the ways that the information obtained may be integrated into existing programs.

A student survey form should ensure inclusion of the following types of information:

- Identifying information: the name, grade level, and sex of the student.
- Explanatory information: the purpose of the survey and how the information will be used.
- A system of ranking or rating specific sports activities: a listing of sports that students may rank or rate.
- Opportunity for suggesting other sports alternatives: space for listing possible interests that are not included in the listing should be provided.
- Opportunity for comments: general questions regarding attitudes or other suggestions for sports programs would be desirable.

The procedures that are followed in the distribution of a student survey may influence the outcomes. It usually is wise to ensure distribution to every student at a time when students can provide their individual responses without undue peer pressure.

Student surveys should be conducted periodically as a means of identifying current needs and the changing patterns of student interest. Determination of the frequency of student surveys should be based on the frequency of significant composition of the student body, the number of times that athletic programs are designed, and the feasibility of survey efforts. Completion of surveys on a regular basis could ensure the timelines of data being used for program planning.

Appendix G

Sample Student Athletic Interest Form

The purpose of this survey is to ensure that the total athletic program provides both males and females an equal opportunity to compete in athletics in a meaningful way.

The degree of student interest or the lack of interest in athletic activities will be used to help determine what sports will be offered by the district. Every effort will be made to satisfy students' requests based on the interests recorded in this survey. Please note that cheerleading and pompon activities are not considered athletic activities but extracurricular activities.

Please answer each section carefully. Be sure that you indicate in rank order the different sports that either you prefer to play or that you feel would satisfy your interests and abilities. One = 1, the highest rank.

School

Grade	Date
Gender *Optional* ❑ Male ❑ Female	Race/Ethnicity *Optional*

I. Athletic offerings that I have played and will continue to play: (Rank Order 1-6; 1 is the most preferred; 6 is the least preferred.)

____ Baseball
____ Basketball
____ Bowling
____ Cross Country
____ Football
____ Golf
____ Gymnastics
____ Hockey
____ Soccer
____ Softball
____ Swimming
____ Tennis
____ Track and Field
____ Volleyball
____ Wrestling
____ Others: _____
____ _____

Comments

II. **Athletic offerings that I have not played but would like to play: (Rank Order 1-6; 1 is the most preferred; 6 is the least preferred.)**

_____ Archery	_____ Hockey
_____ Baseball	_____ Soccer
_____ Basketball	_____ Softball
_____ Bowling	_____ Swimming
_____ Boxing	_____ Tennis
_____ Cross Country	_____ Track and Field
_____ Fencing	_____ Volleyball
_____ Football	_____ Wrestling
_____ Golf	_____ Others: _____
_____ Gymnastics	_____ _____

Comments:

III. The six top offerings that I am most interested in playing:

1. _____	4. _____
2. _____	5. _____
3. _____	6. _____

IV. What do you like most about the sports program in your school?

V. How do you think the program could be improved?

Attorney General's Opinion on Logos

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

JAMES E. DOYLE
ATTORNEY GENERAL

Patricia J. Gorence
Deputy Attorney General

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857
608/266-1221

September 17, 1992

CAG 25-92

Herbert J. Grover, Ph.D.
State Superintendent
Department of Public Instruction
125 South Webster Street
Madison, Wisconsin 53702

Dear Dr. Grover:

You request my opinion on the following related questions:

1. Does the use by public schools of American Indian logos, mascots or nicknames, singly or in combination, come within the purview of section 118.13 of the Wisconsin statutes?

2. Is Wisconsin Administrative Code chapter PI 9 consistent with legislative intent?

The answer to both questions is yes.

Section 118.13 provides:

> Pupil discrimination prohibited. (1) No person may be denied admission to any public school or be denied participation in, be denied the benefits of or be discriminated against in any curricular , extracurricular, pupil services, recreational or other program activity because of the person's sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.

The primary source for construction of a statute is the language of the statute itself. State v. Burkman, 96 Wis. 2d 630, 638, 292, N.W.2d 641 (1980). If the statutory language is unambiguous, one arrives at the intention of the Legislature by giving language its ordinary and accepted meaning. Vigil v. State, 76 Wis. 2d 133, 142, 250 N.W.2d 378 (1977). Only where a statute is not clear on its face as to its meaning or application does one look to the legislative intent in construing a statute. McLeod v. State, 85 Wis. 2d 787, 792, 271 N.W.2d 157 (Ct. App. 1978).

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A statute is ambiguous if two or more reasonably well-informed persons could understand the language in different senses. Allen v. Juneau County, 98 Wis. 2d 103, 108, 295 N.W.2d 218 (Ct. App. 1980). I believe that reasonably well-informed persons can differ over the definition of discrimination as applied to "any curricular, extracurricular, pupil services, recreational or other program or activity." The ultimate purpose of statutory construction is to give effect to the legislative intent.
Madison v. Southern Wis. R. Co., 156 Wis. 352, 360, 146 N.W. 492 (1914). Since there is not single document evidencing the legislative intent of the language of the statute, legislative intent must be construed from other actions of the Legislature.
Pittman v. Lieffring, 59 Wis. 2d 52, 62, 207 N.W.2d 610 (1973)

Under section 227.19, the Legislature may delegate rulemaking authority to an agency. Through section 118.13(3)(a)2. the Legislature gave the superintendent of public instruction the power to create rules to administer this anti-discrimination statute. Pursuant to its statutory authority, the Department of Public Instruction (Department) established Wisconsin Administrative Code chapter PI 9.

Wisconsin Administrative Code chapter PI 9 provides:

> "Discrimination" means any action, policy or practice, including bias, stereotyping and pupil harassment, which is detrimental to a person or group of person and differentiates or distinguishes among persons, or which limited or denies a person or group of person opportunities , privileges, roles or rewards based, in whole or in part, on sex, race, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability, or which perpetuates the effects of past discrimination.

Wis. Admin. Code § PI 9.02(5) (1986).

> "Pupil harassment" means behavior towards pupils based, in whole or in part, on sex, race, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability which substantially interferes with a pupil's school performance or creates an intimidating hostile or offensive school environment.

Wis. Admin. Code § PI 9.02(9) (1986).

> "Stereotyping" means attributing behaviors, abilities, interests, values and roles to a person or group of persons on the basis, in whole or in part, of their sex, race, national origin, ancestry, creed pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.

Wis. Admin Code § PI 9.02(4) (1986).

To become effective, this rule has to go through an extensive legislative review process. The Department first sent its proposed rule to the Legislative Council. The Legislative Council subsequently issued a report which the Department forwarded to the Senate. The Senate Committee on Education and Governmental Operations reviewed the report and held a public hearing. No objections were made, and the Senate approved Wisconsin Administrative Code chapter PI 9. The Department also sent the report to the Assembly where it was reviewed by the Committee on Education. The committee held a public hearing and made modifications. The changes that resulted did not have the effect of excluding school mascots from the purview of this antidiscrimination rule (Wisconsin Legislative Council Memo, dated January 16, 1992). The Assembly took no further action and approved the rule. Therefore, the Legislature must have intended the statute to be at least as broad as the rule provides.

"'[W]hen the legislature charges an administrative agency to apply and enforce a particular statute . . . the agency's construction and interpretation of the statute are entitled to great weight and any rational basis will sustain its practical interpretations.'" William Wrigley, Jr. Co. v. DOR, 160 Wis. 2d 53, 69-70, 465 N.W.2d 800 (1991). Wisconsin Administrative Code chapter PI 9 should be given great weight, both because the Department has the express power to implement and administer section 118.13 and because the Department's definitions are unquestionably rational. In addition, this rule has been effect for almost six years, and longstanding administrative construction of a statute is accorded great weight in determining legislative intent because the Legislature is presumed to have acquiesced in that construction if it has not amended the statute. Dairyland Harvestore v. DOR, 151 Wis. 2d 799, 804, 447, N.W.2d 56 (Ct. App. 1989).

Wisconsin Administrate Code chapter PI 9 is not ambiguous. The language is clear and direct; therefore, to interpret the rule we need only look at its ordinary meaning. Virgil v. State, 76 Wis. 2d at 142. Section 118.13 prohibits discrimination against a member of a protected class in a program or activity approved or sponsored by the school board. The rule defines discrimination as any action, policy or practice of a school that affects a person or a group of persons. This includes stereotyping and pupil harassment. The rule further defines stereotyping as attributing behavior, abilities, interests, values or roles to a protected class, and it defines pupil harassment as behavior toward a protected class which creates an intimidating, hostile or offensive school environment. In addition, such actions must be detrimental and perpetuate effects of past discrimination. Webster's New Collegiate Dictionary 310 (1977) defines detrimental as something "harmful" or "damaging."

In the application of this language to the question at hand, American Indians are a protected class that has been subjected to discrimination in the past. It is entirely possible that an American Indian log, mascot or nickname could cause an American Indian harm by reinforcing a stereotype and/or creating an intimidating or offensive

environment, thus perpetuating past discrimination. Therefore, the language of the statute and the rule is comprehensive enough that an American Indian logo, mascot or nickname used by a public school be a violation of section 118.13.

American Indian logos, mascots and nicknames, however, are not per se violations of section 118.13. Certainly not all images or nicknames depicting a protected class are intrinsically negative or offensive. In fact, the groups themselves often use self-images to project a positive impression. The mere name of a tribe such as "Seminole" could, under the facts of a given case, be wholly neutral.

Section 118.13(3)(a)1. provides that appeals of the superintendent's decisions under this subsection are subject to chapter 227 review. This implies that there must be a contested case before the superintendent with findings of fact, conclusions of law and a record containing evidence. Therefore, whether or not a violation exists must be determined on a case-by-case basis after such a hearing.

You have also asked if intent is a necessary element of a finding of discrimination under section 118.13. In my opinion there is not requirement of intent except for the provision in section 118.13(4). Neither the statute nor the rule expressly or impliedly require intent for a general finding of discrimination. Had the Legislature wanted findings of discrimination to apply only to intentional acts, it would have so provided. Therefore, if discrimination is found to exist, it exists regardless of intent. Section 118.13(4) provides, however, that if intent can be demonstrated, financial sanctions may be imposed. For example, noncompliance with a superintendent's administrative order may be strong evidence of "intent," thus enhancing the possibility of a civil forfeiture action under section 118.13(4).

In conclusion, I am of the opinion that Wisconsin Administrative Code chapter PI 9 is consistent with legislative intent, and American Indian logos, mascots and nicknames used by public schools may violate section 118.13, whether or not public schools may violate section 118.13, whether or not they are intended to be discriminatory.

Sincerely

James E. Doyle
Attorney General

JED:WDW:bfr

CAPTION:

Discrimination such as the use by public schools of American Indian logos, mascots or nicknames does come within the purview of section 118.13 of the Wisconsin statutes.

State Superintendent's Letter to District Administrators

State of Wisconsin
Department of Public Instruction

125 South Webster Street, Madison, WI 53702 (608)266-3390 (608)267-2427 TDD

Herbert J. Grover
State Superintendent

Mailing Address:
P.O. Box 7841
Madison, WI 53707-7841

October 15, 1992

Dear District Administrator:

Enclosed is a copy of the recent Attorney General's Opinion that I requested on the subject of whether American Indian logos, mascots, and nicknames come within the purview of the pupil nondiscrimination statute, sec. 118.13, Stats., and other questions.

The opinion is straightforward and clear with respect to the following:

1. The use of such logos, mascots, and nicknames is clearly within the purview of the law.

2. The departmental administrative rules in PI 9, Wis. Admin. Code, which define the statutory language "discrimination," "pupil harassment," and "stereotyping" are a valid interpretation of the statute.

3. Evaluations of whether a particular use by a school district of an American Indian logo, mascot, or nickname must be made on an individual, case-by-case basis.

4. Discrimination which meets the definitions of either stereotyping or pupil harassment must be shown to be detrimental to be a violation.

5. For such use to be a violation of the statute, intent by the district to discriminate need <u>not</u> be shown.

I am sending this letter to all Wisconsin school districts. I ask that you review the Attorney General's opinion carefully, consider whether it applies to schools in your district, discuss it with your school board, and make a determination as to whether any change is in order.

A growing number of American Indian organizations, as well as other organizations, have developed formal statements calling for the elimination of American Indian-related logos and mascots in both the public and private sectors. A partial list of these include:

- o Governor's American Indian Language and Cultural Education Board
- o Wisconsin Indian Education Association
- o Great Lakes Intertribal Council
- o National Education Association
- o National Congress of American Indians (National Tribal Chairpersons)
- o Indian Antidefamation Council (tribal chairs, educators, religious leaders, political leaders, and others)
- o American Indian Movement
- o Intertribal Council of United Indian Nations in Oklahoma

As you know, each school district is required by sec. 118.13(2)a, Stats., to already have in place policies and procedures for receiving and investigating complaints by residents of the district regarding possible violations of the pupil nondiscrimination law. Decisions by the school board upon such complaints are appealable to the state superintendent under sec. 118.13(3)a1, Stats., which are in turn reviewable in circuit court.

I trust this information is helpful.

Sincerely,

Herbert J. Grover
State Superintendent

HJG:ss

Attachment

Resources

Technical Assistance. When seeking clarification of the pupil nondiscrimination statute and rule, ideas for implementation, provision of training, print, and audiovisual resources, or other assistance unrelated to an appeal that has been officially filed with the state superintendent, contact the following:

Wisconsin Department of Public Instruction
P.O. Box 7841
Madison, WI 53707-7841

Chet Bradley, Consultant
Health Education/Physical Education
(608) 266-7032

Melissa Keyes, Consultant
Sex Equity Programs
(608) 267-9157

Wisconsin Interscholastic Athletic Association
41 Park Ridge Drive
P.O. Box 267
Stevens Point, WI 54481
(715) 344-8580

Douglas Chickering, Executive Director
Karen Kuhn, Associate Director

For assistance with federal law, contact the U.S. Department of Education, Office for Civil Rights—Region V, 401 South State Street, 7th Floor, Chicago, Illinois 60605-1202, (312/886-3456).

Section 118.13, Wis. Stats

118.13 Pupil discrimination prohibited. (1) No person may be denied admission to any public school or be denied participation in, be denied the benefits of or be discriminated against in an curricular, extracurricular, pupil services, recreational, or other program or activity because of the person's sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, or physical, mental, emotional, or learning disability.

(2) (a) Each school board shall develop written policies and procedures to implement this section and submit them to the state superintendent as a part of its 1986 annual report under s. 120.18. The policies and procedures shall provide for receiving and investigating complaints by residents of the school district regarding possible violations of this section, for making determinations as to whether this section has been violated and for ensuring compliance with this section.

(b) Any person who receives a negative determination under par. (a) may appeal the determination to the state superintendent.

(3) (a) The state superintendent shall:

1. Decide appeals made to him or her under sub. (2)(b). Decisions of the state superintendent under this subdivision are subject to judicial review under ch. 227.

2. Promulgate rules necessary to implement and administer this section.

3. Include in the department's biennial report under s. 15.04(1)(d) information on the status of school district compliance with this section and school district progress toward providing reasonable equality of educational opportunity for all pupils in this state.

(b) The state superintendent may:

1. Periodically review school district programs, activities, and services to determine whether the school boards are complying with this section.

2. Assist school boards to comply with this section by providing information and technical assistance upon request.

(4) Any public school official, employee, or teacher who intentionally engages in conduct which discriminates against a person or causes a person to be denied rights, benefits, or privileges, in violation of sub. (1), may be required to forfeit not more than $1,000.

Section note: Ch. 418 s. 929 (55)(a), Laws of 1977; 1983 Acts 374, 412; 1985 Act 29; 1987 Act 332; 1987 Act 332 s. 66a provides that sub. (4) takes effect July 1, 1989; 1985 Act 29 s. 3043(1) provides that the state superintendent shall submit the rules required under s. 118.13(3) (a) 2 in final form no later than July 1, 1986; 1991 Act 31 amends 118.13(1) by the addition of religion to the protected groups.